Primeflight Aviation Services, Inc. *and* Local 726, International Union of Journeymen and Allied Trades. Case 29–RC–11405

October 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On December 11, 2006, the Petitioner, Local 726, International Union of Journeymen and Allied Trades, filed a petition seeking to represent a unit of all full-time and regular part-time skycap employees, wheelchair service employees, baggage handling employees, baggage service agents, priority parcel service agents, passenger service employees and ticket verification employees employed by Primeflight Aviation Services, Inc. (the Employer) at LaGuardia Airport Central Terminal and LaGuardia Airport Marine Terminal in Queens, New York. The Employer asserts that it is controlled by several common air carriers subject to the jurisdiction of the Railway Labor Act and that, therefore, the National Labor Relations Board (Board) lacks jurisdiction under Section 2(2) of the National Labor Relations Act. The Petitioner contends that the Employer is not directly or indirectly controlled by common air carriers subject to the Railway Labor Act. After a hearing, the Regional Director transferred the proceeding to the Board. As recommended by the Regional Director, the Board thereafter referred the case to the National Mediation Board (the NMB) for a jurisdictional opinion, discussed below.

On the entire record in this case, the Board[1] finds:

The Employer provides skycap, wheelchair, baggage, priority parcel, ticket verification, and passenger services under contract with numerous air carriers at LaGuardia Airport. The parties stipulated, and the NMB found, that the Employer's employees perform work that is traditionally performed by employees in the airline industry.

The record also indicates that the air carriers with whom the Employer contracts exercise substantial control over the Employer's LaGuardia Airport operations. The air carriers dictate the Employer's staffing levels by allotting to it a specific number of hours of work on a yearly basis. Frequent changes in the carriers' flight schedules also dictate fluctuations in the Employer's staffing levels. In addition, the carriers regularly change the daily assignments of the Employer's employees based on the needs of the carrier.

The carriers quickly communicate those required staffing and assignment changes to the Employer by e-mail, telephone, meetings, and direct instruction from carrier supervisors. The Employer's general manager also meets twice a week with managers of its largest contract airline; and once a week with the next largest contract airline.[2]

The carriers dictate the type of training the Employer's employees must receive. Half of the Employer's employees receive their training directly from the carriers. The carriers also train an employee of the Employer to give training, and that individual trains the other half of the Employer's work force. The carriers provide space to hold the training, and require annual retraining under deadline. The carriers also require the Employer to maintain training records, which the carriers may audit and verify at any time.

The Employer hires its own employees, but those new hires are subject to background checks and alcohol and drug testing required by the carriers. The Employer sets its employees wages and benefits, although wage levels are constrained by specific per hour prices paid by the carriers. The carriers also effectively retain the right to have the Employer remove an employee from their account, or even to terminate an employee. When such a request is made by a carrier, the Employer complies.

Some of the Employer's employees wear airline uniforms. The carriers approve the uniforms of the Employer's other employees. The carriers also provide the bulk of the Employer's equipment.

Section 2(2) of the Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. § 152(3). The Railway Labor Act, as amended, applies to:

> [E]very common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continu-

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] These two airlines account for two thirds of the Employer's operations at LaGuardia Airport.

> ing authority to supervise and direct the manner or rendition of his service. [45 U.S.C. § 151 First and 181.]

On February 2, 2007, the Board requested that the NMB review the record in this case and determine the applicability of the Railway Labor Act to the Employer. The NMB subsequently issued an opinion stating its view that the Employer and its employees at LaGuardia Airport are subject to the Railway Labor Act. *Primeflight Aviation Services,* 34 NMB 175 (2007).[3]

[3] The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air and rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. Both prongs of the test must be met, and the NMB concluded that they were in this case.

Additionally, the NMB noted that its decision was consistent with several previous NMB decisions asserting Railway Labor Act jurisdiction over the operations of the Employer's corporate predecessor at several airports. E.g., *International Total Services*, 20 NMB 537 (1993); *International Total Services*, 16 NMB 44 (1988).

Having considered the facts of this case in light of the opinion issued by the NMB, we find that the Employer is engaged in interstate air common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act. Accordingly, we shall dismiss the petition.

ORDER

It is ordered that the petition in Case 29–RC–11405 is dismissed.

Dated, Washington, D.C. October 31, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD